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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,088	02/16/2002	Graham Lindley Spruiell	IMA-0014-OXYPAK	7112

7590
Edward L. Kelley
5 Utica Street
Lexington, MA 02420

06/24/2003

EXAMINER

MENDOZA, MICHAEL G

ART UNIT PAPER NUMBER

3761

DATE MAILED: 06/24/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

N.K.

Office Action Summary

Application No.

10/075,088

Applicant(s)

SPRUIELL, GRAHAM LINDLEY

Examiner

Michael G. Mendoza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-17, 19, 21, 22 and 25-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-17, 19, 21, 22 and 25-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 2-17, 19, 21, and 22 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 5, 7, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson 4197842.
4. Anderson teaches an emergency medical kit, comprising a breathable oxygen delivery system and a medication, the system being fully capable for use in response to symptoms of an attack of a vascular disease; a portable container; wherein the medication is prescribed for a particular user by a physician.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-4, 13, 17, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Monhan 4699288.

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7. Anderson teaches the emergency medical kit of claim 7 wherein the breathable oxygen delivery system comprises a portable oxygen tank having at least 50 cubic inch internal storage capacity, an oxygen storage operating pressure range of between 100 and 400 PSI (col. 1, lines 60-63); a regulator valve; an oxygen delivery tube; and a user oxygen delivery device. It should be noted that Anderson fails to teach wherein the portable oxygen tank comprises a composite material over wrapped onto a gas impermeable inner vessel

8. Monhan teaches a portable oxygen tank with a common composite material. Therefore it would have been obvious to one of ordinary skill in the art to modify the oxygen tank of Anderson to include the composite material of Monhan for a light weight, fragmentation resistant vessel that is inexpensive to manufacture for portable safety (col. 1, lines 38-41).

9. As to claims 3 and 4, Anderson/Monhan teaches a portable system. It should be noted that Anderson/Monhan fails to teach wherein the portable oxygen tank is less than 5.0 pounds or less than 2.0 pounds. However, it would have been obvious to one of ordinary skill in the art to make the oxygen tank as lightweight as possible, including the claimed limitations, to make the system as light weight/portable as possible.

10. As to claims 26 and 27, emergency medical kit of Anderson/Monhan is fully capable of being used in response to a heart attack or a stroke.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Lowell et al. 6292687.

12. Anderson teaches the emergency medical kit of claim 5. It should be noted that Anderson fails to teach the kit further comprising one of a wireless communication device and a loud noise-making device.

13. Lowell et al. teaches a common wireless communication device 31 and a loud noise-making device 30 for detecting, location and responding to a predetermined medical emergency. Therefore it would have been obvious to one of ordinary skill in the art to modify the kit of Anderson to include the devices of Lowell et al. to alarm that a victim needs immediate help, and also to provide immediate information of the victim's location (col. 2, lines 62-64).

14. Claims 8-10, 11, 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Zapol et al. 6063407.

15. Anderson teaches the emergency medical kit of claim 7. It should be noted that Anderson fails to teach wherein the medication is provided in a dosage capable of preventing thrombosis.

16. Zapol et al. teaches the use of inhaled medication to preventing thrombosis. Therefore it would have been obvious to one of ordinary skill in the art to use the medication of Zapol et al. to provide a simple, rapid, selective and efficacious method for treating, inhibiting or preventing a vascular thrombosis in a mammal (col. 4, lines 19-21).

17. Anderson/Zapol teaches the emergency medical kit of claim 7, wherein the medication is provided in a dosage capable of inducing arteriolar relaxation (col. 5, lines

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42-46), comprising a nitrate, aspirin (acetylsalicylic acid), heparin, glycoprotein IIb/IIIa inhibitors (col. 1, lines 24-29).

18. Claims 12, 28, 29, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Duhaylongsod 6141589.

19. Anderson teaches an emergency medical kit, comprising a breathable oxygen delivery system. It should be noted that Anderson fails to teach an antiarrhythmic agent.

20. Duhaylongsod teach a common inhalable antiarrhythmic agent medication (col. 18, lines 48-50) comprising magnesium for controlling the heart (col. 5, lines 27-32). Therefore it would have been obvious to one of ordinary skill in the art to include the antiarrhythmic of Duhaylongsod for precise pacing and control of cardiac contraction during heart attacks or surgery.

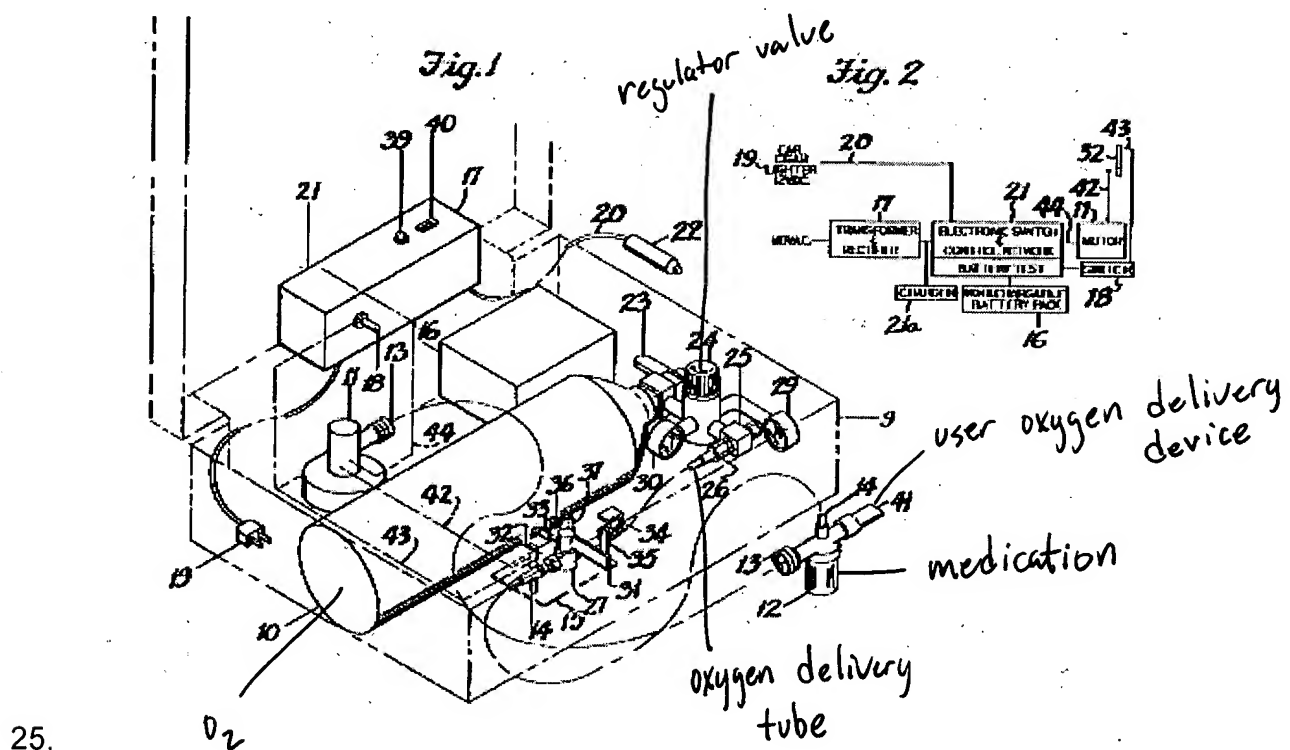
21. Claims 19, 21, 22, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zapol et al. in view of Kirchgeorge et al. 6327497.

22. Zapol et al. teaches a method for treating a serious attack of a vascular disease immediately upon the onset of one or more symptoms of the attack comprising the steps of: establishing a risk (col. 4, lines 46-50); predetermining a treatment; providing the patient with a portable emergency medical kit (col. 6, lines 56-59); teaching the patient how to recognize the symptoms of the serious attack and how to carry out the treatment (col. 4, lines 52-61). It should be noted that Zapol fails to teach the portable emergency medical kit including a supply of breathable oxygen.

23. Kirchgeorge et al. teaches a common portable emergency medical kit including a supply of breathable oxygen 70 for reviving a victim. Therefore it would have been

obvious to one of ordinary skill in the art to include the method step of supply oxygen to a victim of Kirchgeorge et al. for restoring the proper oxygenation and cell perfusion necessary for survival (col. 1, lines 51-52).

24. Zapol/Kirchgeorge teaches the method of claim 19 further comprising the step of providing a medication in the portable emergency kit for one of: assisting in preventing thrombosis; assisting in inducing arteriolar relaxation.



Conclusion

26. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (703) 305-3285. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



MM
June 11, 2003



WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700